

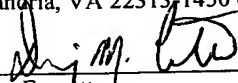


CERTIFICATE OF MAILING

PATENT

7836XDCL\$

I hereby certify that this paper is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Appeal Brief - Patents; Commissioner for Patents; P.O. Box 1450; Alexandria, VA 22313-1450 on January 30, 2008.


Denise Everett

IN THE UNITED STATES PATENT & TRADEMARK OFFICE

Appellant: Keith H. Baker et al : Paper No.:
Serial No.: 10/671,969 : Group Art Unit: 1762
Filed: September 26, 2003 : Examiner: Elena Tsoy
For: Compositions For Treating Shoes And Articles Employing Same

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

The present Appeal Brief is submitted in support of the Notice of Appeal filed by Certificate of EFS Electronic Transmission and received by the U.S. Patent and Trademark Office on November 30, 2007.

I. REAL PARTY IN INTEREST

The real party in interest in this appeal is the assignee of the present application, The Procter & Gamble Company.

II. RELATED APPEALS AND INTERFERENCES

There are no other prior or pending appeals, interferences or judicial proceedings

02/04/2008 NGUYEN1 00000063 10671969

01 FC:1402

510.00 0P

known to the Appellants, the Appellants' undersigned legal representative or the assignee which may be related to, directly affect or be directly affected by or having a bearing on the Board's decision in the present appeal.

III. STATUS OF CLAIMS

Claims 1-75 have been cancelled by prior Amendment. Claims 77-82 and 94-118 have been withdrawn from examination in a previous response. Claims 76, 83-93, and 119 stand rejected and are the subject of the present appeal. A complete copy of rejected claims 76, 83-93 and 119 is set forth in the Section VIII, **Claims Appendix**, below.

IV. STATUS OF AMENDMENTS

No claim amendments were made subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

The present invention is generally directed to compositions, methods and articles of manufacture relating to overcoming conventional problems associated with cleaning shoes (see, e.g. page 1, Field of Invention, and, generally, Background of Invention). More particularly, according to independent claim 76, a method for treating one or more shoes comprising at least one surface made from natural leather is provided (e.g. page 8, lines 25-27, page 3, lines 25-26). The method comprises: contacting the one or more shoes directly or indirectly with one or more treating compositions, each of which comprises one or more benefit agents that imparts one or more desired benefits to the one or more shoes when the treating composition is applied directly or indirectly (see, e.g. page 9, lines 12-19) to the one or more shoes prior to and/or during and/or after washing the one or more shoes with or in an aqueous medium (e.g. page 94, line 13), wherein said treating composition is formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the natural leather (see generally pages 15-25,

and specifically page 16, lines 26-31 and page 17, lines 10-13) so that any damage as a result of washing the one or more shoes with or in an aqueous medium with application of the treating composition is reduced compared to washing the one or more shoes with or in an aqueous medium without application of the treating composition. (See, e.g. "Example" results set forth on pages 108-111 showing reduced relative sock liner and seam abrasion, taken with page 2, line 35 bridging to page 3, line 20).

Claim 83 further defines the method of claim 76 wherein at least one of the treating compositions comprises a cleaning composition (e.g. page 15, lines 11+, page 4, lines 3-5), and claims 84-87 and 89 further define this embodiment wherein the cleaning composition is applied to at least one exterior surface of the one or more shoes (page 4, lines 3-5, e.g.), is applied in the wash cycle of a washing machine (see page 106 "Wash Cycles"), is in the form of a gel (page 93, lines 3-4), is applied directly via an applicator (page 95, lines 16-18), is applied directly to at least one surface area of one or more shoes prior to placing the one or more shoes in the wash solution (page 95, lines 25-26), respectively. Claim 88 further defines the method of claim 87 wherein the applicator is a brush (page 112, lines 25-26).

Claim 90 recites the method of claim 76 further comprising placing the one or more shoes in a flexible article which may be done either by placing the one or more shoes in the same flexible article, placing the one or more shoes in separate flexible articles, and placing the article or articles into a wash solution (page 96, lines 28-33, page 97, lines 25-31. According to claim 91, the flexible article is a flexible container (e.g. page 97, line 25) and according to claim 92 the flexible article is a containment bag (page 95, line 20). In accordance with claim 119, which further defines claim 90, the one or more treatment compositions are releasably contained in the flexible article and released during the wash cycle (e.g. page 96, lines 34-37).

Claim 93 further defines the method according to claim 76 wherein the one or more benefit agents is selected from the group consisting of: cleaning agents, conditioning agents, disinfecting agents, antibacterial agents, antimicrobial agents, antifungal agents, odor control agents, waterproofing agents, soil release agents, brightening agents, alkaline pH modifiers, perfume, and mixtures thereof (page 3, lines 29-76 and page 8, lines 20-24, e.g.).

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The following issues are presented for consideration by the Board:

1. The rejection of claims 76, 83-87, and 89-93 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,489,389 to Ritter et al. ("Ritter").
2. The rejection of claims 76, 83-87, 89-93 under 35 U.S.C. §103(a) as being unpatentable over Ritter in view of Canadian Patent No. 1052685A to Wu et al. ("Wu").
3. The rejection of claims 76, 83-87, and 89-93 under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,306,435 to Ishikawa et al. ("Ishikawa") in view of Wu.
4. The rejection of claims 86-92 and 119 under 35 U.S.C. §103(a) as being unpatentable over any of the primary combinations of Ritter, Ritter in view of Wu and Ishikawa in view of Wu, further in view of Japanese Patent No. 10276961 to Watanabe ("Watanabe").
5. The rejection of claims 90-92 under 35 U.S.C. §103(a) as being unpatentable over any of the primary combinations of Ritter, Ritter in view of Wu, and Ishikawa in view of Wu, further in view of Japanese Patent No. 09271597 to Yoshioka et al. ("Yoshioka").

VII. ARGUMENTS

1. As will be set forth in detail below, it is believed the methods for treating shoes

defined by claims 76, 83-87 and 89-93 are nonobvious over and patentably distinguishable from the teachings of Ritter. Accordingly, the rejection under 35 U.S.C. §103(a) should be reversed. Favorable action by the Board is respectfully requested.

A. The Rejection

In the Official Action dated August 31, 2007, the Examiner argues that Ritter teaches that shoes made from an oil-treated mineral-tanned leather may be washed in a washing machine using a phosphate-free laundry detergent such as Persil®, which the Examiner asserts as "the claimed cleaning composition," without any significant loss of quality. The Examiner notes that Ritter is silent about a tanning agent being chromium but states that it is well known in the art that a chromium salt is generally used for tanning leather. The Examiner points to Table II (column 12) of Ritter as setting forth evidence that the detergent disclosed by Ritter in his experimental protocol confers a benefit to the leather that reduces wash-related damage. By logical implication, the Examiner takes the positions that (1) the Ritter detergent, Persil® must inherently include a Ca/Mg removal agent since dirt and soil normally contain Ca and Mg, and (2) the Ritter detergent does not remove significant levels of chromium from the leather because "the shoes do not significantly lose their quality after washing."

B. The Examiner misconstrues Ritter and the claimed invention is nonobvious over Ritter

Ritter is directed to treatment compositions for leather skins comprising aqueous dispersions of anionically-modified urethane fatty oligomers of a specified structure (see Abstract). The preparations may be incorporated into the leather upon completion of the main tanning process, and Ritter specifically teaches in the case of mineral-tanned leathers, the preparations may perform the re-tanning function, or may be fixed with mineral tanning agents (column 2, lines 7-9). The novelty of Ritter is in the class of polymer compounds used

for oiling leather (e.g. column 2, lines 63-65). The "primary" objectives are stated as providing "reliable oiling effect in conjunction with reliable fixing of the oiling preparation in the fiber structure of the leather" (column 3, lines 18-21). The "problem addressed by the [Ritter] invention" is disclosed as providing an oiling finish to leather that is resistant to washing and dry cleaning (column 3, lines 37-39). With respect to mineral-tanned leather, the Ritter treatment is taught as providing "an additional oiling or hydrophobicizing effect" which can be fixed into the leather through acidic groups (column 7, lines 30-34). In particular, with respect to suitability for mineral-tanned skins, Ritter teaches that the skins (leather) are "normally deacidified before the treatment" unless they are dyed after the treatment. The actual method of impregnation and treatment is disclosed at column 8 line 61, bridging to column 9, line 20, and involves, inter alia, low pH conditions, high temperatures, stages lasting several hours, milling in a drum, acidification, and additional fixing, id.

Clearly, the Ritter leather treatment composition cannot be the treatment compositions employed by the present methods, and even more clearly, Ritter fails to teach or suggest methods for treating shoes using compositions applied in the context of washing the shoes in an aqueous medium whereby relative wash-related damage is reduced. Indeed, the "oiling" activity discussed by Ritter is conducted during the preparation of leather for the purpose of incorporation into a downstream article, such as a shoe.

The Examiner appears persuaded, however, by disclosure in Ritter found under "washing tests" at column 12, lines 18-57 wherein 10cm² sections of leather are subject to wash conditions and weighed before and after the wash in order to test/demonstrate "resistance" to cleaning. Ritter uses a laundry detergent disclosed as Persil®, and asserts that "the test is intended to simulate the conditions under which a sports shoe is washed in a domestic washing machine" (id. lines 25-27). Appellants note, however, that the leather sections subject to the Ritter washing regimen are "conditioned for 24 hours in accordance

with DIN 53303," prior to evaluation. Looking at the reported data. This "conditioning," according to information found at <http://www.qs100.net/htm/2224.htm>, involves testing of leather via, e.g. accelerated aging. The data reported in Ritter is relevant simply to leather quality, and not to quality of any downstream article of manufacture that has been subject to washing. Ritter Table II reports reduction in area of the sample, and retention of weight as the two factors being assessed. These factors reflect retention of moisture by the leather swatch. It is clear from Ritter's assertion of this test as a simulation, that Ritter anticipates incorporation of his oiled leather into shoes, but the present methods are not related to relative wash-related damage reduction between a shoe comprising oiled leather and a shoe without an oiled leather portion. Rather, the present invention relates to a relative reduction in wash related damage between the same shoe, regardless of whether the leather portion, as a raw skin, was subjected to any particular conditioning regimen.

In the context of the Ritter test wash, the Examiner asserts the "Persil®" brand laundry detergent disclosed therein as being the treatment composition of the present methods. This appears based on the Ritter representation that the test is designed to simulate conditions of washing sports shoes. However, Appellants note that the simulation aspect is with regard only to the relative resistance to washing by conditioned and unconditioned leather, and has nothing to do with wash related damage to shoes containing the same leather, as is the case with the present invention. This difference in focus reflects the fundamental difference between the methods. Ritter seeks to demonstrate that items manufactured from raw leather conditioned with his inventive oils are more resistant to problems associated with washing leather, specifically, shrinking and drying, than articles manufactured from unconditioned leather. The present invention, on the other hand, demonstrates that a shoe washed according to the present inventive methods sustains less wash related damage than

the same shoe washed in accordance with conventional methods. The material from which the shoe is manufactured is the same for both shoes.

The Examiner completely misconstrues the experimental motivation and protocol of Ritter by asserting to the Ritter as evidence that "resistance to wash" was conferred by the *laundry detergent* (Persil®) used to simulate wash conditions. Appellants note that the laundry detergent was a controlled part of the Ritter protocol and both conditioned and unconditioned leather swatches were washed in Persil®. The "wash-resistance" effect reported by Ritter was clearly conferred by the Ritter conditioning oil applied to one group of the swatches. The same detergent was used to wash the "wash-resistant" swatches and the dry/shrunk swatches and there is no evidence whatsoever that it conferred any resistance benefit as asserted by the Examiner.

The Examiner asserts that since a benefit is conferred, it must inherently be due to the laundry detergent, and since the same benefit is conferred by the instant treatment methods employing the instantly recited treatment compositions, the laundry detergent must be chemically identical to the instant treatment compositions. This reasoning, however, is fatally flawed by the fact that the premise is clearly erroneous - the detergent did not confer the benefit. The detergent was the control condition applied to all swatches, those exhibiting wash-resistance and those exhibiting wash damage, and was responsible for the latter, not the former empirical result.

The Examiner's assertion that the Ritter detergent of choice "Persil®," must therefore be formulated like the instant compositions is an illogical non-sequitor. There is no teaching or suggestion that Persil® is formulated, e.g., to remove Ca/Mg without removing significant levels of Chromium. Appellants further note that Persil® is merely a brand name applied to a line of cleaning products marketed worldwide by Unilever. Appellants note that the Unilever website (www.unilever.com) posts over 30 formulations for Persil, and that Persil

appears to be a major house brand rather than a specific product. A quick scan of the products related to laundry reveals inclusion of mostly conventional chelators and there is no product touted with respect to leather products. As instantly disclosed, non-selective chelating is a problem with conventional detergents that a treating composition employed by the present inventive methods is formulated to overcome.

To establish prima facie obviousness of the claimed invention, all the claim limitations must be taught or suggested by the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). Ritter fails to teach or suggest a method for treating shoes with a leather surface comprising contacting the shoes with a treating composition comprising one or more benefit agents that imparts a desired benefit to the shoes when the treating composition is applied prior to and/or during and/or after washing the shoes with or in an aqueous medium, wherein the treating composition is formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the leather so that any damage due to washing the shoes is reduced when compared to untreated shoes. Ritter teaches that there is less wash/detergent-related damage to leather portions of articles such as sports shoes if the article is made from leather skins that were treated with his conditioning oils, when compared to articles made from leather skins not treated with his conditioning oils. The instant inventive methods, however, demonstrate a relative reduction in wash related damage to the same shoe, regardless of treatment of the assembled portions. The treatment polymers of Ritter do not remove mineral ions, and, obviously, do not remove them selectively. The laundry detergent of Ritter is not formulated to reduce damage to shoes containing leather, and is merely a conventional detergent formulated to remove minerals unselectively, resulting in the very problem sought to be addressed by the present methods.

Further, in order to render a claimed invention obvious, the prior art must enable one skilled in the art to make and use the claimed invention, *Motorola, Inc. v. Interdigital Tech. Corp.*, 43 U.S.P.Q.2d 1481, 1489 (Fed. Cir. 1997). Ritter teaches treatment of leather, not treatment of shoes. "Shoes" are suggested by Ritter as an article which may be made from the treated leather. The laundry detergent asserted by the Examiner as equivalent to the instant treatment compositions damages leather, which is why it was selected for illustrative purposes by Ritter. Indeed, the laundry detergent asserted by the Examiner as "reducing damage to shoes caused by washing" causes substantial damage the Ritter leather samples that were not impregnated with the Ritter oils. Appellants submit, therefore, that a person of ordinary skill in the art would not be able to practice the instant inventive methods by reference to the teachings of Ritter.

Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious. *Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987).

Hence, the methods for treating shoes defined by claims 76, 83- 87 and 89-93 are nonobvious and patentably distinguishable from Ritter. Accordingly, the rejection of these claims under Ritter is improper and should be removed.

2. As will be set forth in detail below, it is believed the methods for treating shoes defined by claims 76, 83-87, 89-93 are nonobvious over and patentably distinguishable from the teachings of Ritter in view of Wu. Accordingly, the rejection under 35 U.S.C. §103(a) should be reversed. Favorable action by the Board is respectfully requested.

A. The Rejection

Specifically, Ritter is applied for the reasons set forth above. The Examiner notes that Ritter fails to teach that the leather shoes are washed using a composition which delivers a

Ca/Mg removal agent without removing significant levels of Chromium from the leather. The Examiner applies Wu for disclosure of "a casual leather shoe decontamination agent comprising surfactant, lustring [sic] agent, colloid, moisture retainer, and deionized water that removes Ca and Mg." Appellants note that this sentence represents the *entire* disclosure of Wu. The Examiner argues that it would be obvious to use the decontamination agent of Wu in the washing protocol of Ritter. The Examiner also takes the position by implication that since Wu does not teach that the decontamination composition removes significant levels of chromium from tanned leather, then "Wu does not teach that the decontamination agent contains a chromium removing agent."

B. The references fail to establish a prima facie case.

The deficiencies of Ritter are set forth in detail in the first argument, above. Ritter, in pertinent part, teaches comparative washing of leather swatches that have been conditioned with an inventive oil verses swatches that have not been conditioned and reports that washing with ordinary detergent, exemplified by Persil® damages the latter swatches more than the former swatches. Ritter suggests that this protocol simulates the effect of washing leather shoes. washing of and compares

As a preliminary matter to a discussion of Wu, Appellants note that Wu is not an appropriate prior art reference. It is nothing more than the title of a reference that is not, despite concerted effort at doing so, capable of being accessed in its entirety. Indeed, the Derwent® document provided by the Examiner as the Wu disclosure expressly notes that not even an abstract of this reference is available. Hence, the complete disclosure of Wu is: "Casual leather shoes decontamination agent - includes surfactant, lustring [sic] agent, colloid, moisture retainer, and deionised [sic] water, and removes calcium and magnesium."

Appellants submit that Wu is the epitome of a non-enabling disclosure, and cannot overcome the deficiencies of the primary reference either with respect to the lack of establishment of prima facie obviousness, or with respect to lack of enablement. Wu fails to disclose any Ca/Mg removal agents or any other method for removing Ca/Mg so that is impossible to know whether contemplated agents/methods also remove chromium. Indeed, as Appellants note in their disclosure, since most Ca/Mg removal agents also remove chromium, one may assume that in the absence of a teaching of any formulative means for preserving chromium content, the Ca/Mg removal agents also remove chromium.

The Examiner make an improper leap of logic by asserting that since Wu fails to disclose the problem of prior art leather shoe washing compositions, the compositions of Wu therefore do not cause them. On the contrary, the short Wu disclosure includes "Ca/Mg" removal agents, which inclusion is the precise cause of the problem of excessive Cr removal from leather substrates, and Wu fails to teach or suggest any counter-measures to this well-known effect.

Further, as noted above, Ritter fails to teach or suggest methods of treating shoes utilizing shoe treatment compositions formulated to remove Ca/Mg while significantly retaining the chromium in the leather portion of the shoe, in accordance with the present inventive methods, and fails to teach shoe treatment compositions of any sort that relatively reduce wash-related damage to shoes. Indeed, the detergent disclosed by Ritter exhibits the formulation deficiencies associated with the problems sought to be overcome by the present invention. Importing the decontamination composition of Wu into the wash protocol of Ritter fails to eliminate or overcome those deficiencies. The short disclosure of Wu, even if taken on its face to enable what it states, would still not enable the present invention in combination with Ritter since it does not teach, suggest or enable Ca/Mg removal means whereby chromium is significantly retained, in accordance with the present invention.

The teachings of Ritter and Wu are completely silent with respect to the embodiments/elements defined by claims 86-88, directed to gel forms, applicators, and brush applicators, (generally) respectively, and are completely silent with respect to the embodiments/elements defined by claims 90-92, directed to different flexible article embodiments.

To establish prima facie obviousness of the claimed invention, all the claim limitations must be taught or suggested by the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). The combination of Ritter and Wu fails to teach methods for treating shoes comprising, inter alia, use of compositions formulated to deliver an effective level of a Ca/Mg removal agent without removing significant levels of Cr from the leather, and fails to teach methods whereby the relative wash related damage to shoes is decreased, as required by base claim 76. Further, the sparse disclosure of Wu merely states a conventional composition and does not teach or suggest inclusion of Ca/Mg removal agents in accordance with the present inventive methods. Moreover, neither Ritter nor Wu teach or suggest gel forms of shoe treatment compositions, applicators, brush applicators, or methods of washing shoes comprising flexible articles in accordance with the present invention.

Hence, the methods for treating shoes defined by claims 76, 83- 87 and 89-93 are nonobvious and patentably distinguishable from Ritter in view of Wu. Accordingly, the rejection of these claims under Ritter and Wu is improper and should be removed.

3. As will be set forth in detail below, it is believed the methods for treating shoes defined by claims 76, 83-87, and 89-93 are nonobvious over and patentably distinguishable from the teachings of Ishikawa in view of Wu. Accordingly, the rejection under 35 U.S.C. §103(a) should be reversed. Favorable action by the Board is respectfully requested.

A. The Rejection

The Examiner asserts that Ishikawa discloses a method for treating shoes (at column 12, line 36) made from leather, fur and fibrous material with a composition, where the leather, fur and woven, knit and unwoven fabrics made of natural fibers such as animal hair, wool, silk, cotton and the like or their mixed fabrics with synthetic fibers treated with the treating compositions can be washed in water and retain flexibility and excellent dimensional stability. The Examiner further asserts that the Ishikawa treating composition comprises surfactants, microbiocide, perfume, pH regulators, and whitening agents, constituting the benefit agents of the present claim. In concise terms, the Examiner argues that Ishikawa teaches shoes of natural leather such as tanned leather and dyed leather that are treated with a treating agent that results in retaining flexibility and an excellent dimensional stability even after repeated washing in water. The Examiner notes that Ishikawa fails to teach washing leather shoes with a composition which delivers Ca/Mg removal agents without removing significant levels of Cr from the natural leather. Wu is applied for asserted disclosure of a decontamination agent comprising surfactant, lustring agent, colloid, moisture retainer, and deionized water, that removes Ca and Mg. The Examiner concludes that it would be obvious to use the water based decontamination agent of Wu for washing leather shoes in water in accordance with Ishikawa "since Wu teaches that the decontamination agent removes calcium and magnesium leather shoes [sic]."

Essentially, it is the Examiner's position by implication that the decontamination agent of Wu does not remove significant levels of Cr from the tanned leather because Wu does not teach that the decontaminating agent contains a Cr removing agent.

B. The combined teachings of the references fail to establish a prima facie case and fail to enable the present inventive methods.

Contrary to the assertions by the Examiner, Ishikawa discloses methods and treatment compositions intended to be applied to *RAW* substrates. The raw leather or skins may

thereafter be incorporated into downstream articles of manufacture such as shoes (column 12, lines 5-17, e.g.). Ishikawa fails to teach or suggest either compositions or methods employing those compositions, intended for application to or treatment of shoes. There is no teaching or suggestion in Ishikawa that application of the Ishikawa compositions to articles such as shoes would impart any benefit whatsoever, and common sense dictates the exact opposite result. The methods of Ishikawa result in incorporation of hydrophilic molecules and water into the leather, and an expansion of the leather. Treatment of an article such as a shoe according to the Ishikawa methods would therefore result in undesirable (given that the leather is already sewn into the shoe) expansion of the leather resulting in strain or breakage of the sewn threads, weakening the integrity of the shoe as a whole. Ishikawa fails to teach any methods for treating shoes.

As noted by the Examiner, the methods of Ishikawa do not include application of compositions (to shoes or otherwise) formulated for effective delivery of Ca/Mg removal agents without removing significant amounts of the chromium in the leather portion of the shoe (or leather substrate), as required by present independent claim 76.

Wu, which has one sentence of disclosure and is completely non-enabling with regard to any element, does not overcome these deficiencies. Wu does not teach methods of washing shoes that decrease relative damage to shoes, and expresses only a concern for "decontamination," without definition. Further, it is well known in the art that most Ca/Mg removal agents found in conventional detergents ARE Cr removal agents, unless they are carefully selected to avoid Cr removal. Neither Wu nor Ishikawa teach the motivation or desire to retain Cr in the leather portion of the shoe substrate, hence, the Examiner's position that Wu impliedly teaches selection for retention of Cr is an illicit hindsight attempt to get this element into the combined references. The present specification provides 11 pages of disclosure setting forth detailed guidance on how to formulate the compositions to provide

effective Ca/Mg removal while retaining Cr during washing of leather-containing shoes (pages 15-25). As presently noted, Ca/Mg removal agents such as those disclosed by Wu are highly desired for removal of particulate dirt, such as that which may be found on shoes (page 15, lines 34-37, e.g.), and that the excess removal of Cr is a problem unique to shoes because other typically leather-containing garments do not require Ca/Mg removal (page 16, first paragraph). Ordinary chelaters may be expected to remove all three ions and must be carefully selected by, for example, relative binding affinities or by consideration of functional pH, or by consideration as to whether application is direct or indirect (see, e.g. page 16, lines 10-33) in order to avoid the undesirable removal of Cr from the tanned leather portion of shoes.

Since most detergents known in the art are non-selective with respect to what minerals they remove, and, as stated in the specification, it is well known that most chelators which remove Ca and Mg also remove chromium, Appellants submit that, in the absence of any teaching to the contrary, the Wu teaching of a Ca/Mg removal agent suggests the problem sought to be overcome by the instant methods.

Appellants once again stress that the Wu disclosure amounting to a single topic sentence cannot and does not enable the practice of methods that effectively remove Ca and Mg from leather while significantly retaining chromium. Further, Wu does not overcome the deficiency of Ishikawa with respect to establishment of a prima facie case based on disclosure of treatment methods that decrease the relative wash-related damage to shoes. Ishikawa teaches a treatment composition that if applied to shoes would result in expansion and deformity of the shoe, with tension on the sewn threads such that the shoe would be likely to sustain increased damage in the wash. Wu is completely unconcerned with wash-related damage to shoes.

To establish prima facie obviousness of the claimed invention, all the claim limitations must be taught or suggested by the prior art, *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (CCPA 1974). In order to render a claimed invention obvious, the prior art must enable one skilled in the art to make and use the claimed invention, *Motorola, Inc. v. Interdigital Tech. Corp.*, 43 U.S.P.Q.2d 1481, 1489 (Fed. Cir. 1997). Furthermore, references relied upon to support a rejection under 35 U.S.C. §103 must provide an enabling disclosure, i.e., they must place the claimed invention in the possession of the public, *In re Payne*, 203 U.S.P.Q. at 245. The combination of Ritter and Wu fails to teach methods for washing shoes that decrease the relative wash-related damage to shoes. Further, the references fail to teach or suggest or provide any guidance for the formulation of compositions which may be employed by the shoe treatment methods to effectively remove Ca/Mg ions without removing significant amounts of the Cr from the natural leather portions of a shoe. Finally, Appellants note that both references are silent with respect to the embodiments defined by the dependent claims 86-88, and 90-92, which recite gel forms, applicators, brush applicators, placing shoes in flexible articles in a wash solution, flexible containers, and containment bags, respectively.

Hence, the methods for treating shoes defined by claims 76, 83-87, and 89-93 are nonobvious and patentably distinguishable from Ishikawa in view of Wu. Accordingly, the rejection of these claims under Ishikawa and Wu is improper and should be removed.

4. As will be set forth in detail below, it is believed the methods for treating shoes defined by claims 86-92 and 119 are nonobvious over and patentably distinguishable from the teachings of the primary combinations of Ritter, Ritter in view of Wu and Ishikawa in view of Wu, further in view of Watanabe. Accordingly, the rejection under 35 U.S.C. §103(a) should be reversed. Favorable action by the Board is respectfully requested.

A. The Rejection

The Examiner applies the three primary combinations of references, Ritter, Ritter in view of Wu, and Ishikawa in view of Wu, to the base claims as applied in the above §103 rejections. The Examiner further notes that the cited references fail to teach a cleaning composition in the form of a gel, fails to teach compositions applied to shoes by a brush before washing and further fails to teach placement into a flexible bag or release into the water during a wash cycle. The Examiner applies Watanabe for the teaching that a detergent may be formulated as a gel and applied by a brush or made into microparticles and pressurized to be sprayed to, for example, a shoe for washing. The Examiner further takes the position that a gel applied to shoes by brush and placed into a flexible bag would be released into water during the wash cycle.

B. The dependent claims are nonobvious and patentable since the claim from which they depend is nonobvious and patentable.

Claims 86-92 and 119 all depend either directly or indirectly from base claim 76. The arguments establishing the nonobviousness and patentability of independent claim 76 over these combinations of references are set forth in detail, above. Specifically, the deficiencies of all the primary combinations with respect to establishment of a prima facie case of obviousness of claim 76, and with respect to enabling the method of claim 76, are set forth in detail, above. The Watanabe reference is applied for its disclosure of elements that are not germane to the nonobviousness or patentability of claim 76 over any of the primary combinations listed in this rejection. Watanabe does not discuss methods relating to treating/cleaning shoes comprising a leather portion and does not teach or suggest compositions formulated to decrease wash-related damage to shoes. Further, Watanabe does not disclose chelators or discuss problems related to selective chelation of Ca and Mg over Cr. Hence, Watanabe does not overcome the previously established deficiencies of the prior

art with respect to claim 76 and claim 76 is therefore nonobvious and patentable over the primary combinations in further view of Watanabe.

Dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious. *Hartness Int'l, Inc. v. Simplimatic Eng'g Co.*, 819 F.2d 1100, 1108, 2 USPQ2d 1826, 1831 (Fed. Cir. 1987). Claims 86-92 and 119, all of which depend either directly or indirectly from independent claim 76 are therefore nonobvious and patentable over the primary combinations further in view of Watanabe. Accordingly, the rejection of claims 86-92 and 119 under 35 U.S.C. §103 over the primary combinations further in view of Watanabe is improper and should be removed.

5. As will be set forth in detail below, it is believed the methods for treating shoes defined by claims 90-92 are nonobvious over and patentably distinguishable from the combined teachings of Ritter, Ritter in view of Wu, or Ishikawa in view of Wu, further in view of Yoshioka. Accordingly, the rejection under 35 U.S.C. §103(a) should be reversed. Favorable action by the Board is respectfully requested.

A. The Rejection

The Examiner applies the primary combinations to independent claim 77 in accordance with the arguments set forth in Arguments 1, 2, and 3 respectively. The Examiner applies Yoshioka for the disclosure of washing shoes in flexible bags to prevent damage to shoes.

B. Dependent claims are patentable and nonobvious if the claims from which they depend are patentable and nonobvious.

Claims 90-92 depend either directly or indirectly from claim 76, which is set forth in detail, above. The nonobviousness and patentability of the subject matter of claim 76 over the primary combinations is established above. Applicants concede that the patentability of

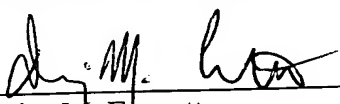
claims 90-92 stands or falls with the patentability of base claim 76. Yoshioka is applied for disclosure of elements inapposite to the obviousness analysis of claim 76. Yoshioka does not teach or suggest methods for treating shoes employing compositions formulated to selectively remove Ca/Mg ions over Cr ions or methods useful in particular with respect to shoes having at least one natural leather portion. Hence, Yoshioka does not overcome the previously established deficiencies of the primary combinations with respect to setting forth a prima facie case and enabling the invention defined by instant claim 76. Hence, claim 76 is also nonobvious and patentable over the primary references further in view of Yoshioka.

As noted, it is axiomatic that dependent claims are nonobvious under section 103 if the independent claims from which they depend are nonobvious. Hence the rejection of dependent claims 90-92 under 35 U.S.C. §103 over the primary references further in view of Yoshioka is improper and removal is earnestly solicited.

* * * * *

For all of the reasons identified above, the rejections of claims 76, 83-93, and 119 under 35 U.S.C. §103 are improper and should be reversed. Favorable action by the Board is respectfully requested.

Respectfully submitted,



Denise M. Everett
Registration No. 47,552
Dinsmore & Shohl LLP
1900 Chemed Center
255 East Fifth Street
Cincinnati, Ohio 45202
(513) 977-8787

VIII. CLAIMS APPENDIX

Claim 76. A method for treating one or more shoes comprising at least one surface made from a natural leather, the method comprising contacting the one or more shoes directly or indirectly with one or more treating compositions, each of which comprises one or more benefit agents that imparts one or more desired benefits to the one or more shoes when the treating composition is applied directly or indirectly to the one or more shoes prior to and/or during and/or after washing the one or more shoes with or in an aqueous medium, wherein said treating composition is formulated to deliver an effective level of a calcium/magnesium removal agent without removing significant levels of chromium from the natural leather so that any damage as a result of washing the one or more shoes with or in an aqueous medium with application of the treating composition is reduced compared to washing the one or more shoes with or in an aqueous medium without application of the treating composition.

Claim 83. The method of claim 76, wherein at least one of the treating compositions comprises a cleaning composition.

Claim 84. The method of claim 83, wherein the cleaning composition is applied to at least one exterior surface of the one or more shoes.

Claim 85. The method of claim 83, wherein the cleaning composition is applied in the wash cycle of a washing machine.

Claim 86. The method of claim 83, wherein the cleaning composition is in the form of a gel.

Claim 87. The method of claim 83, wherein the cleaning composition is applied directly via an applicator.

Claim 88. The method of claim 87, wherein the applicator is a brush.

Claim 89. The method of claim 83 wherein the cleaning composition is applied directly to at least one exterior surface of the one or more shoes prior to placing the one or more shoes in the wash solution.

Claim 90. The method as recited in claim 76 which further comprises placing the one or more shoes in a flexible article which may either be done by placing the one or more shoes in the same flexible article, or placing the one or more shoes in separate flexible articles, and placing the article or articles into a wash solution.

Claim 91. The method as recited in claim 90 wherein the flexible article is a flexible container.

Claim 92. The method as recited in claim 91 wherein the flexible article is a containment bag.

Claim 93. The method according to claim 76 wherein the one or more benefit agents is selected from the group consisting of: cleaning agents, conditioning agents, disinfecting agents, antibacterial agents, antimicrobial agents, antifungal agents, odor control

agents, waterproofing agents, soil release agents, brightening agents, alkaline pH modifiers, perfume, and mixtures thereof.

Claim 119. The method according to claim 90, wherein the one or more treatment compositions are releasably contained in the flexible article and released during the wash cycle.

IX. EVIDENCE APPENDIX

None.

X. RELATED PROCEEDINGS APPENDIX

None.